UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

In re Application of CITY OF ALMATY for Order to Take Discovery Pursuant to 28 U.S.C. § 1782	Misc. Case No. 16-109

MEMORANDUM OF LAW IN SUPPORT OF *EX PARTE* APPLICATION FOR ORDER TO TAKE DISCOVERY PURSUANT TO 28 U.S.C. § 1782

LATHAM & WATKINS LLP

Robert J. Malionek
robert.malionek@lw.com
885 Third Avenue
New York, NY 10022
Tel.: (212) 906-1200
Fax: (212) 751-4864

Attorneys for Applicant City of Almaty

Of Counsel:

LATHAM & WATKINS LLP

David J. Schindler (*pro hac* application to be filed)
david.schindler@lw.com
Manny A. Abascal (*pro hac* application to be filed)
manny.abascal@lw.com
Julie R. F. Gerchik (*pro hac* application to be filed)
julie.gerchik@lw.com
355 South Grand Avenue
Los Angeles, CA 90071-1560
Tel.: (213) 485-1234
Fax: (213) 891-8763

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Applicant City of Almaty ("Almaty") respectfully submits this Memorandum of Law in support of its application for an order pursuant to 28 U.S.C. § 1782 ("Section 1782") to take discovery in the Southern District of New York for use in a foreign proceeding (the "Application"). Section 1782 allows an applicant to take discovery in the United States for use in a foreign proceeding if certain standards are met, which Almaty contends are met in this case.

I. PRELIMINARY STATEMENT

Applicant Almaty is the largest city in the Republic of Kazakhstan. For more than a decade, its former mayor Viktor Khrapunov ("Viktor"), his wife Leila Khrapunova ("Leila"), their son Iliyas Khrapunov ("Iliyas"), and their daughter Elvira Kudryashova ("Elvira") (collectively, the "Khrapunovs") have conspired to systematically loot hundreds of millions of dollars of public assets belonging to the people of Almaty and to launder their ill-gotten gains through a complex web of bank accounts and shell companies dispersed throughout the world, particularly in the United States. As a result of their extensive, ongoing efforts to conceal their stolen funds, the Khrapunovs have eluded authorities thus far and effectively prevented the people of Almaty from recovering their assets.

Nonetheless, government officials in Kazakhstan have remained steadfast in their determination to bring the Khrapunovs to justice. The Kazakh authorities are actively pursuing 28 criminal cases and multiple civil cases in Kazakhstan and other foreign countries against the Khrapunovs, the large majority of which already have resulted in formal criminal charges. While the proceedings have made substantial progress, much of the evidence that is needed to uncover the Khrapunovs' international criminal enterprise lies in the United States. By its Application, Almaty seeks to obtain this crucial evidence by conducting discovery concerning the Khrapunovs' U.S.-based money laundering activities.

Almaty's Application satisfies each of Section 1782's statutory requirements: (1) All of the entities from which Almaty seeks discovery reside in this District; (2) the discovery is sought for use in multiple foreign proceedings; and (3) Almaty has broad participation rights in those foreign proceedings. Moreover, each of the additional factors that the district court may consider in using its discretion weighs in favor of granting this Application: (a) None of the subpoena targets is subject to judicial process in Kazakhstan; (b) this Court's assistance will not offend the Kazakh tribunal; (c) Almaty is not circumventing Kazakh proof-gathering restrictions or any other Kazakh policy; and (d) the proposed subpoenas are not unduly intrusive or burdensome. Indeed, this Application is the only manner in which Almaty can obtain this important evidence because a federal district court in California dismissed a civil suit brought by Almaty against the Khrapunovs on the grounds of *forum non conveniens*. *See City of Almaty v. Khrapunov*, No. CV14-3650-FMO-CW, 2015 WL 9694794 (C.D. Cal. Sept. 21, 2015) (the "California Lawsuit"). Thus, absent some relief from this Court pursuant to Section 1782, the Khrapunovs will be able to expand their looting and money laundering activities in the United States without repercussion.

For these reasons, the Application should be granted.

II. BACKGROUND

A. The Khrapunovs Used The United States To Launder Stolen Assets

Almaty is an "administrative territorial unit" under the laws of Kazakhstan. Declaration of Julie R. F. Gerchik ("Gerchik Decl."), Ex. SS ("Darmanbekov Decl.") ¶ 2. The Mayor of Almaty, the "Akim," represents Almaty's interests in its relations with state bodies, organizations, and citizens. *Id.*

Viktor became the Akim of Almaty in June 1997, and pledged to faithfully execute the powers and responsibilities entrusted to him for the good of the people. *Id.* ¶ 3. Viktor's oath was a fraud. Instead of fulfilling his fiduciary duties, Viktor stole state-owned assets worth hundreds of millions of dollars with the aid of his family and co-conspirators. *Id.* ¶ 4. Using his official authority as the Akim of Almaty, Viktor transferred real estate property owned by Almaty to entities directly and indirectly controlled by one or more members of the Khrapunovs at artificially reduced prices. *Id.* The Khrapunovs then resold these real estate properties at enormous profit, and marshalled the stolen money through a complex web of bank accounts and holding companies, specifically designed to conceal the source of the funds and to evade the Kazakh authorities. *Id.*

Between 2003 and 2007, Leila and Iliyas transferred tens of millions of dollars in stolen money to Swiss bank accounts held by Elvira and others. *Id.* ¶ 5. Fearing discovery of their fraud, the Khrapunovs fled to Switzerland in 2007 where they continued to launder and hide their stolen assets. *Id.* In 2011, the Kazakh government body responsible for investigating corruption and economic crimes brought formal charges in Kazakhstan against the Khrapunovs and their co-conspirators. *Id.* ¶¶ 9-11. In 2012, this same investigative body sought the assistance of the Swiss government through a formal Mutual Assistance Request ("MAR") and a subsequent Amended MAR dated February 20, 2012 and September 14, 2012, respectively. *See* Gerchik Decl., Exs. A-C. These MARs provide detailed examples of the breadth of the Khrapunovs' crimes in Kazakhstan and laundering activities in Switzerland. *Id.* In response to the MARs, the Swiss authorities opened their own investigations into the Khrapunovs. *See id.* Exs. D-E.

Recognizing that Switzerland was not the safe haven they intended it to be, the Khrapunovs redirected their laundering activities to the United States, which does not have a mutual legal assistance treaty or extradition treaty with Kazakhstan. In 2010, Elvira and her husband, Dmitry Kudryashov ("Dmitry"), immigrated to the United States, where they still reside. Darmanbekov Decl. ¶ 6. Elvira and Dmitry, along with the rest of the Khrapunovs, formed shell entities organized under U.S. (and other) law, opened U.S. banks accounts both in their own names and the names of the entities they control, and engaged in a series of residential and commercial real estate transactions – each a means of hiding the stolen funds in an effort to avoid detection and seizure. *Id.* A substantial number of those entities, bank accounts, and properties are located in New York.

1. The New York Entities

The RPM Entities. RPM-MARO LLC ("RPM-MARO") and RPM USA LLC ("RPM USA") (together, the "RPM Entities") are organized and registered to do business in New York, and share a registered address at 14 Vanderventer Avenue, Suite 255, Port Washington, New York 11050. Gerchik Decl. Exs. F-G. Elvira is the sole member and officer of RPM-MARO. *See id.* Ex. I at 8 (special interrogatory response by RPM-MARO identifying Elvira as its sole officer), Ex. K (information sheet in the escrow file for one of Elvira's property purchases describing Elvira as the "[s]ole member" of RPM-MARO). Its affiliate, RPM USA, is wholly owned by Swiss Promotion Group SA. *See id.* Ex. J at 9 (special interrogatory response by RPM USA identifying Swiss Promotion Group SA as its parent company). Swiss Promotion Group SA is, in turn, controlled by Iliyas. *See id.* Ex. C at 2-3, 10. In 2014, Elvira used the RPM Entities to purchase shares in World Health Network, Inc., a corporation that also is headquartered and registered to do business in New York. *See id.* Ex. I at 12 ("[Elvira] caused funds to be transferred to RPM-MARO to purchase shares in World Health Networks, Inc."), Ex. J at 9 ("RPM USA is a minority shareholder of World Health Networks, Inc."), Ex. H.

The RPM Entities routinely engage in six- and seven-figure wire transfers using offshore bank accounts. For example, in June 2012, RPM USA received over $1,000,000 in transfers from Iliyas' attorneys in Switzerland, Chabrier + Associates. *See id.* Ex. O at 1.[1] Then, on November 12, 2012, RPM USA received $1,274,147 from Vilder Company SA. *See id.* Ex. L at 1. Vilder Company appears to be an acronym consisting of the first letter of each of the family member's names – Viktor, Iliyas, Leila, Daniel (Viktor and Leila's youngest child), and Elvira – and initiated the wire transfers used to purchase Iliyas' and Elvira's house in Beverly Hills, CA, in January 2013. *See, infra,* Section II.A.2. Vilder Company transferred an additional $1,000,000 to RPM USA in February and March 2013, using FBME Bank in the Cayman Islands. *See id.* Ex. M at 1, Ex. N at 1. On July 22, 2015, the Financial Crimes Enforcement Network of the U.S. Department of Treasury issued a final rule prohibiting U.S. financial institutions from opening or maintaining correspondent accounts on behalf of FBME Bank due to FBME Bank's notoriety as a money laundering vehicle. *See id.* Ex. R.

Similarly, RPM-MARO received $279,972 from an account held under the name Rue Philippe-Plantamour at the Swiss investment firm Compagnie Privee via two wire transfers initiated on July 11, 2014 and September 12, 2014. *See id.* Ex. P at 2, Ex. Q at 1.

The Soho Entities. Soho 3203 LLC, Soho 3310 LLC, and Soho 3311 LLC (collectively, the "Soho Entities") are recently dissolved companies organized and registered to do business in New York. *Id.* Exs. S-U. In April 2013, Elvira used the Soho Entities to purchase three condominiums in the Trump Soho tower with the help of New York real estate attorney Martin Jajan and his firm. Shortly before purchasing the properties, Elvira received a wire of approximately $5 million from an account at FBME Bank held by Crownway Ltd. *See id.* Ex. V at 1. Elvira then wired approximately $3.2 million to Mr. Jajan, who used those funds to purchase the three properties. *See id.* at 2. The purchase prices for the Soho 3203, Soho 3310, and Soho 3311 properties were $879,833, $1,407,321 and $829,351 respectively. *See id.* Exs. W-Y.

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[1] Almaty subpoenaed records from several banks in connection with the California Lawsuit, including JP Morgan, Wells Fargo, Bank of America, and City National Bank. Gerchik Decl. ¶ 5. JP Morgan and Wells Fargo produced documents in response to the subpoenas, but the California Lawsuit was dismissed before they were able to complete their productions. *Id.*

The Soho Entities were not only used to launder the Khrapunovs' stolen funds through the purchase of real estate, but also to launder money directly through the Soho Entities' bank accounts. On May 27, 2014, the Soho 3310 property was sold for $1,405,000. *See id.* Ex. Z. Two days later, Mr. Jajan transferred $1,270,939.25 to Soho 3310 LLC. *See id.* Ex. BB at 2. The next day, a $678,007.54 withdrawal was made from Soho 3310 LLC's account – $600,000 of which was deposited in an account held by one of Elvira's associates, Elena Petelina. *See id.* Ex. BB at 2, Ex. CC. On June 2, 2014, the Soho 3310 account made a $600,000 outbound wire transfer to an account at Bank of America also held by Ms. Petelina. *See id.* Ex. DD at 2.

Likewise, on September 25, 2014, the Soho 3203 property was sold for $840,000. *See id.* Ex. AA. On September 29, 2014, Mr. Jajan transferred $759,810.87 to Soho 3203 LLC. *See id.* Ex. EE at 2. From October 2014 to March of 2015, Soho 3203 LLC gradually transferred these funds to a variety of Elvira's personal and entity accounts in $10,000 to $90,000 increments. *See, e.g.*, *id.* Ex. FF at 2, Ex. GG at 2, Ex. HH at 2.

Finally, on October 16, 2015, the Soho 3311 property was sold for $777,000. *Id.* Ex. AA-2. Elvira personally signed the deed of sale for this transaction. *Id.* at 2, 9-10.

2. The New York Bank Accounts

The banks listed in the chart below have accounts held by individuals or companies connected to the Khrapunovs' laundering activities. In addition to the accounts of the above-named individuals and entities, the accounts of 628 Holdings LLC and Granite Escrow each played a role in the Khrapunovs' efforts to conceal the stolen money. In January 2013, Iliyas and Elvira created 628 Holdings LLC to launder $6.2 million in stolen assets through the financing of a luxurious house located at 628 North Alta Drive in Beverly Hills, California. *See id.* Ex. II, Ex. JJ (Elvira's realtor, Zach Goldsmith, explained, "the buyer will be 628 Holdings, LLC, a Delaware limited liability company. Iliyas is the owner; Elvira is the Manager and authorized signatory"), Ex. KK ("Iliyas is the boss. He is the main guy who controls the entity and makes the decisions."). Iliyas and Elvira paid for the property through two wire transfers initiated by Vilder Company at FBME Bank. *See id.* Exs. LL-MM. The escrow officer for this purchase, Mark Fishman, works for Granite Escrow and handled several similar property transactions in California involving the Khrapunovs. All of the payments for these property purchases passed through Granite Escrow's bank account at City National Bank. *See, e.g., id.*

Known Bank Accounts of the Khrapunovs and their Affiliates

Bank	**Account Holder**
Wells Fargo Bank	Elvira Dmitry Iliyas RPM-MARO LLC Soho Entities 628 Holdings LLC Elena Petelina
JP Morgan Chase Bank	RPM Entities
Bank of America	Elena Petelina
City National Bank	Granite Escrow
Citibank	Martin Jajan

B. The 28 Criminal Actions Against The Khrapunovs In Kazakhstan

The National Anti-Corruption Bureau within the Ministry of the Republic of Kazakhstan on Civil Services (the "Anti-Corruption Bureau")[2] is the investigative body within the government of Kazakhstan primarily responsible for detecting and deterring crimes of corruption. Darmanbekov Decl. ¶ 7. On March 31, 2011, the Anti-Corruption Bureau opened its first official criminal investigation against Viktor and his cohorts for the systemic theft of public assets belonging to the people of Almaty. *Id.* ¶ 9. The Anti-Corruption Bureau extended its investigation to Leila on August 15, 2011, and to Iliyas and Elvira on December 29, 2011. *Id.* To date, the Anti-Corruption Bureau has initiated *28 separate criminal cases against the Khrapunovs and their co-conspirators* – 19 cases in 2011, 5 cases in 2012, and 4 cases in 2015 (collectively, the "Criminal Proceedings"). *Id.* ¶ 10. In each of the 28 criminal cases (all in the pre-trial stage), the Anti-Corruption Bureau is investigating the Khrapunovs and their co-conspirators for violations of Article 176 (Conversion or Embezzlement of Property), Article 177 (Fraud), Article 193 (Legalization of Monetary Funds or Other Property Obtained Illegally), Article 235 (Creation, Guidance, and/or Participation in an Organized Criminal Group or Criminal Association), Article 307 (Abuse of Official Powers), and Article 311 (Acceptance of a Bribe) of the former Criminal Code of the Republic of Kazakhstan. *Id.* ¶ 11; *see also* Gerchik Decl. Ex. B at 12-13, 68-87.

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[2] The President of the Republic of Kazakhstan established this state body (also known as the Financial Police) on December 11, 2015 to replace the former Agency on Civil Services and Anti-Corruption. Darmanbekov Decl. ¶ 7. The Agency on Civil Services and Anti-Corruption, in turn, was established on August 6, 2014 by merging two separate agencies: (i) the Agency on Civil Services and (ii) the Agency on Combating Economic and Corruption Crimes. *Id.* For simplicity's sake, the current National Anti-Corruption Bureau and all of its prior iterations – including the Agency on Civil Services and Anti-Corruption and the Agency on Combating Economic and Corruption Crimes – are collectively referred to herein as the "Anti-Corruption Bureau."

On November 11, 2011, the Anti-Corruption Bureau officially recognized Almaty as a "damaged party" in the Criminal Proceedings, *id.* ¶ 17, Exs. D-E, defined under Article 71 of the Code of Criminal Procedure as a person who is believed to have incurred moral, physical or property damage as a direct result of a criminal offense, *id.* ¶ 15, Exs. A-B. As a damaged party, Almaty has extensive participatory rights in the Criminal Proceedings, including the right to: (1) give testimony, (2) submit and review evidence, (3) make motions and challenges, (4) participate in court proceedings, (5) plead in court hearings, (6) pursue charges, even if dropped by the public prosecutor, (7) make a complaint about actions (or inactions) of the investigative body, (8) appeal judgments and court resolutions, and (9) protect its rights and legal interests by any other means not contrary to law. *Id.* ¶ 16, Exs. A-B.

Almaty also has the right to bring a civil action against the Khrapunovs, either in conjunction with the Criminal Proceedings or as a separate litigation. *Id.* ¶¶ 19-20. Pursuant to Article 73 of the Code of Criminal Procedure, if Almaty files civil claims against the Khrapunovs before the end of the criminal trial, Almaty will assume the status of a civil claimant within the pending proceedings. *Id.* ¶ 19. Alternatively, Almaty has the option of commencing an entirely new civil action against the Khrapunovs, apart from the Criminal Proceedings. *Id.* ¶ 20.

III. ARGUMENT

A. The Statutory Prerequisites Are Satisfied

Section 1782 authorizes federal courts to compel testimony and document production for use in a foreign proceeding if the following statutory requirements are met:

(1) the person from whom discovery is sought resides or is found in the district of the court to which the application is made;

(2) the discovery is sought for use in a proceeding before a foreign tribunal; and

(3) the application is made by a foreign tribunal or "any interested person." *Esses v. Hanania*, 101 F.3d 873, 875 (2d Cir. 1996); 28 U.S.C. § 1782(a). All three prerequisites are satisfied here.

1. Each Of The Discovery Targets Resides In This District

A federal court's power to compel discovery extends to any "person" – both individuals and legal entities – who (i) resides in, or (ii) is found in the district over which the court presides. 28 U.S.C. § 1782(a). "A person can have more than one residence, given that the elements of permanency and continuity are not necessary to a finding of residency as they are to a finding of domicile." *In re Oxus Gold PLC*, 2006 WL 2927615, at *5 (D.N.J. Oct. 11, 2006). An entity resides where it is headquartered, is incorporated, or maintains an office in which it conducts business. *See OJSC Ukrnafta v. Carpatsky Petroleum Corp.*, 2009 WL 2877156, at *2 (D. Conn. Aug. 27, 2009) ("[Respondent company] conducts business at Two Greenwich Plaza in Greenwich, Connecticut, and thus 'resides' within this district."); *In re Kolomoisky,* 2006 WL 2404332, at *1-2 (S.D.N.Y. Aug. 18, 2006) (respondent corporation located and incorporated in New York); *In re Gemeinshcaftspraxis*, 2006 WL 3844464, at *4 (S.D.N.Y. Dec. 29, 2006) (respondent corporation headquartered in New York).

Alternatively, a business is "found in" a district if it would be subject to personal jurisdiction in that district by virtue of its systematic and continuous activities there, even if its place of incorporation or headquarters is outside the district. *In re Republic of Kazakhstan*, 2015 WL 3855113, at *2 (S.D.N.Y. June 22, 2015) (*citing In re Godfrey*, 526 F. Supp. 2d 417, 422 (S.D.N.Y. 2007)).

Each of the entities from which Almaty seeks discovery resides in this District. Indeed, this Court recently held that Citibank, JP Morgan Chase Bank, Bank of America, and Wells Fargo Bank are located in this District, and authorized discovery of bank records from each of them under Section 1782. *In re Hornbeam Corp.*, 2014 WL 8775453, at *2-3 (S.D.N.Y. Dec. 24, 2014).

- **Citibank** is headquartered at 399 Park Avenue, New York, New York 10043. *See* Gerchik Decl. Ex. NN.
- **JP Morgan Chase Bank** is headquartered at 270 Park Avenue, New York, New York 10017. *See id.* Ex. OO.
- **Bank of America** operates out of at least 25 offices located in New York, New York. *See id.* Ex. PP.
- **Wells Fargo Bank** operates out of at least 13 offices located in New York, New York. *See id.* Ex. QQ.
- **City National Bank** operates out of offices located at 1140 Sixth Avenue, New York, New York 10036 and 400 Park Avenue, New York, New York 10022. *See id.* Ex. RR.
- **Soho 3023 LLC** is organized and registered to do business in New York, and has the following address on file with the New York Secretary of State: 110 Wall St., 11th Floor, New York, New York 10005. *See id.* Ex. S.
- **Soho 3310 LLC** is organized and registered to do business in New York, and has the following address on file with the New York Secretary of State: 110 Wall St., 11th Floor, New York, New York 10005. *See id.* Ex. T.
- **Soho 3311 LLC** is organized and registered to do business in New York, and has the following address on file with the New York Secretary of State: 110 Wall St., 11th Floor, New York, New York 10005. *See id.* Ex. U.

Although the Soho Entities are now dissolved, they continue to exist for the purpose of winding down their affairs and may "prosecute and defend suits, whether civil, criminal or administrative." N.Y. Ltd. Liab. Law § 703(b). Thus, this Court may authorize service of the proposed subpoenas on the Soho Entities, notwithstanding their dissolution. *See In re Grand Jury Subpoenas Issued to Thirteen Corps.*, 775 F.2d 43, 48 (2d Cir. 1985) (holding dissolved corporation had "continuing obligation to respond to subpoenas relating to pre-dissolution conduct" under New York law); *Simplicity Pattern Co. v. Miami Tru-Color Off-Set Serv.*, 210

A.D.2d 24, 25, 619 (1st Dep't 1994) ("dissolution does not affect liability occurring prior to dissolution and such a corporation remains obligated to respond to subpoenas").

2. The Discovery Is Sought For Use In A Proceeding Before A Foreign Tribunal

The court may order discovery "for use in a proceeding in a foreign or international tribunal, including criminal investigations conducted before formal accusation." 28 U.S.C. § 1782(a). In addition to conventional courts, the term "tribunal" includes investigative, administrative, arbitral, and quasi-judicial bodies – *i.e.*, any "first-instance decisionmaker." *Intel Corp. v. Advanced Micro Devices, Inc.*, 542 U.S. 241, 258, 124 S. Ct. 2466, 2479 (2004). A proceeding in such a tribunal need not be pending or even imminent, so long as it is "within reasonable contemplation." *Id.* at 259; *In re Wilhelm*, 470 F. Supp. 2d 409, 410-11 (S.D.N.Y. 2007).

The phrase "for use in" is broadly defined to include anything "that will be employed with some advantage or serve some use in the proceeding." *Mees v. Buiter*, 793 F.3d 291, 298 (2d Cir. 2015). There is no requirement that the evidence be discoverable or admissible in the foreign tribunal. *Intel*, 542 U.S. at 260; *Mees*, 793 F.3d at 302; *Brandi-Dohrn v. IKB Deutsche Industriebank AG*, 673 F.3d 76, 81-2 (2d Cir. 2012).

Here, this prerequisite is satisfied easily because Almaty seeks to use the requested discovery in the pending Criminal Proceedings before the Anti-Corruption Bureau. *See* Gerchik Decl. ¶ 3; Darmanbekov Decl. ¶ 18. *First,* the Criminal Proceedings qualify as proceedings before a foreign tribunal because the Anti-Corruption Bureau is the official investigative body of the Republic of Kazakhstan for crimes of corruption. *See* Darmanbekov Decl. ¶ 7. Based on its investigations, the Anti-Corruption Bureau has discretion to issue an "indictment act," which is ultimately submitted to the public prosecutor and court. *Id.* ¶ 8. The Anti-Corruption Bureau is exactly the type of "first-instance decisionmaker" Congress intended Section 1782 to encompass. *See Intel*, 542 U.S. at 257-58 (commission overseeing "investigative stage" considered a tribunal under Section 1782). Moreover, the Anti-Corruption Bureau already has brought formal charges against the Khrapunovs and their co-conspirators. Darmanbekov Decl. ¶ 10. This is far more than is required under Section 1782, which includes even "criminal investigations conducted before formal accusation." 28 U.S.C. § 1782(a).

Second, the discovery Almaty seeks is highly relevant to the Criminal Proceedings. *See* Darmanbekov Decl. ¶ 14. The Anti-Corruption Bureau is investigating the Khrapunovs' scheme to misappropriate public assets for their personal benefit and to launder the fruits of their fraud here in the United States. *Id.* ¶¶ 9-11. Among other things, Almaty seeks information that will help the Kazakh tribunal trace the stolen money to the Khrapunovs' numerous investments and bank accounts located here. Proof that the Khrapunovs currently control the proceeds of stolen assets is powerful evidence of their involvement in the theft and laundering of proceeds from the theft. The discovery is additionally relevant to the civil actions that Almaty has the right to file both in connection with the Criminal Proceedings and apart from those Proceedings. Accordingly, Almaty properly seeks discovery for use in a foreign proceeding.

3. Almaty Is An Interested Person

Almaty qualifies as an "interested person" who may apply for discovery under Section 1782. The term "interested person" encompasses any person with a reasonable interest in obtaining judicial assistance, including non-litigants. *Intel*, 542 U.S. at 256-58. For instance, a non-litigant with "participation rights" in a proceeding possesses a reasonable interest in obtaining judicial assistance, and thus qualifies as an interested person. *Id.* at 256. Of particular note here, the drafters of Section 1782 intended the term to include "foreign and international officials." *Id.* at 257 (*quoting* Smit, International Litigation Under the United States Code, 65

Colum. L. Rev. 1015, 1027 (1965)); *see also In re Crown Prosecution Serv.*, 870 F.2d 686, 690 (D.C. Cir. 1989) ("A foreign legal affairs ministry, attorney general, or other prosecutor, courts have repeatedly held, fits squarely within the section 1782 'interested person' category."). This Court recently confirmed that a foreign sovereign – specifically, the Republic of Kazakhstan – could bring a Section 1782 application. *In re Republic of Kazakhstan*, 2015 WL 3855113 at *3.

In the Criminal Proceedings at issue here, Almaty plainly qualifies as an "interested person" under Section 1782. The Anti-Corruption Bureau officially has recognized Almaty as a damaged party in the Criminal Proceedings, and as such, Almaty enjoys broad participation rights. Darmanbekov Decl. ¶¶ 16-17, Exs. A-D. Specifically, Article 71 of the Code of Criminal Procedure grants Almaty the right to:

(1) be informed of any allegations or charges;

(2) give testimony;

(3) submit evidence;

(4) make motions and challenges;

(5) use free interpretation services;

(6) have legal representation;

(7) recover property taken from it;

(8) mediate with the suspects or defendants;

(9) examine and comment upon investigative records;

(10) participate in investigative actions, including interrogations, with the permission of the investigator;

(11) examine pre-trial case materials;

(12) submit motions for protective orders, restraining orders, or other security measures;

(13) receive copies of decisions issued by the investigative body and court;

(14) participate in court proceedings;

(15) plead in court hearings;

(16) pursue charges, including where the public prosecutor drops the charges;

(17) review and submit comments on court transcripts;

(18) make complaints about actions or inactions of the investigative body;

(19) appeal court judgments;

(20) be informed of and submit objections to complaints and protests filed in the proceeding;

(21) protect its rights and legal interests by any other means not contrary to law; and

(22) be informed of and submit comments and objections to a party's proposed plea bargain.

Id. ¶ 16, Exs. A-B. Courts have considered non-litigants with far fewer participation rights than these to be interested parties under Section 1782. *See, e.g.*, *Intel*, 542 U.S. at 256-57 (holding non-litigant qualified as an interested party where non-litigant had "right to submit information for the [investigative body's] consideration" and right to "proceed to court if the [investigative body] discontinues the investigation").

B. The *Intel* Factors Weigh In Favor Of Discovery

Where, as here, the statutory requirements are satisfied, Section 1782 vests the court with the discretion to grant the requested discovery. However, this discretion must be exercised "in light of the twin aims of the statute: providing efficient means of assistance to participants in international litigation in our federal courts and encouraging foreign countries by example to provide similar means of assistance to our courts." *Mees*, 793 F.3d at 297-298 (internal quotation marks omitted). "In pursuit of these twin goals, the statute has, over the years, been given increasingly broad applicability." *Brandi-Dohrn*, 673 F.3d at 80. In fact, the Second Circuit holds that it is an abuse of discretion to deny a Section 1782 application if the denial is contrary to the statute's twin aims. *See, e.g.*, *Metallgesellschaft v. Hodapp*, 121 F.3d 77, 79-80 (2d Cir. 1997) (overturning order denying application where "district court did not advert to these objectives, explicitly or implicitly, and in fact the reasons the court did give were at odds with these goals"); *Euromepa, S.A. v. R. Esmerian, Inc.*, 51 F.3d 1095, 1102 (2d Cir. 1995) (overturning order denying application and noting "[a]bsent specific directions to the contrary from a foreign forum, the statute's underlying policy should generally prompt district courts to provide some form of discovery assistance").

In *Intel*, the Supreme Court set forth four factors to guide a district court's discretion:

(1) whether "the person from whom discovery is sought is a participant in the foreign proceeding;"

(2) "the nature of the foreign tribunal, the character of the proceedings underway abroad, and the receptivity of the foreign government or the court or agency abroad to U.S. federal-court judicial assistance;"

(3) "whether the § 1782(a) request conceals an attempt to circumvent foreign proof-gathering restrictions or other policies of a foreign country or the United States;" and

(4) whether the request is "unduly intrusive or burdensome."

Intel, 542 U.S. at 264-65. Here, each of these factors weighs heavily in favor of granting the Application.

1. None Of The Discovery Targets Is A Participant In The Foreign Proceeding

As the Supreme Court explained in *Intel*, the need for assistance under Section 1782 is not as apparent when the foreign tribunal has jurisdiction over the persons from whom discovery is sought and "can itself order them to produce evidence." *Intel*, 542 U.S. at 264. This is not the case here. None of the entities from whom Almaty seeks discovery is a party to the proceedings in Kazakhstan, and all are United States residents, beyond the reach of the Kazakh judicial process. Darmanbekov Decl. ¶ 12.

2. The Requested Discovery Would Not Offend The Foreign Tribunal

The principal concern when considering this factor is whether there is authoritative evidence that "the foreign tribunals would be 'offended' by our judicial aid." *In re Minatec Fin. S.A.R.L.*, 2008 WL 3884374, at *7 (N.D.N.Y. Aug. 18, 2008). Here, not only would the Anti-Corruption Bureau (and any other Kazakh tribunal) not be "offended" by the requested assistance, Darmanbekov Decl. ¶ 13, but the Anti-Corruption Bureau itself already requested the assistance of foreign authorities in its investigation of the Khrapunovs' criminal activities, Gerchik Decl. Exs. A-C. The Kazakh courts also would not be offended by this assistance because the additional evidence would greatly assist the trier of fact in deciding the issues in the Criminal Proceedings. Darmanbekov Decl. ¶ 14.

3. The Requested Discovery Is Not An Attempt To Circumvent Kazakhstan's Proof-Gathering Restrictions

Almaty seeks carefully-defined discovery from entities and individuals located in the United States, which is directly relevant to the Criminal Proceedings in Kazakhstan and which would otherwise be unavailable – precisely the type of discovery Section 1782 is designed to permit. There is no rule of evidence or other restriction in Kazakhstan that would prevent discovery of, or exclude consideration of, this evidence. Darmanbekov Decl. ¶ 14. Thus, this is not a case in which an applicant attempts to "end-run foreign proof-gathering restrictions or other foreign policies." *In re Geminschaftspraxis Dr. Med. Schottdorf*, 2006 WL 3844464, at *7 (S.D.N.Y. Dec. 29, 2006).

4. The Proposed Subpoenas Are Not Intrusive Or Unduly Burdensome

The proposed subpoenas seek only to elicit non-privileged information that is necessary to the prosecution of the Criminal Proceedings. Gerchik Decl. ¶ 3; Darmanbekov Decl. ¶ 14. The document requests are limited to the "INDIVIDUALS" and "ENTITIES" specifically listed, all of whom are believed to have played a role in the Khrapunovs' criminal organization. The requests are further limited to the time period after the Khrapunovs fled Kazakhstan with their stolen money and began to launder funds into the United States. Accordingly, the proposed subpoenas are not intrusive or unduly burdensome.

IV. CONCLUSION

For the foregoing reasons, Almaty respectfully requests that the Court grant the Application and enter an order authorizing Almaty to serve the proposed subpoenas.

Dated: March 15, 2016

Respectfully submitted,

LATHAM & WATKINS LLP

By [signature]

Robert J. Malionek
robert.malionek@lw.com
885 Third Avenue
New York, NY 10022
Tel.: (212) 906-1200
Fax: (212) 751-4864

Attorneys for Applicant City of Almaty

Of Counsel:

LATHAM & WATKINS LLP

David J. Schindler (*pro hac* application to be filed)
david.schindler@lw.com
Manny A. Abascal (*pro hac* application to be filed)
manny.abascal@lw.com
Julie R. F. Gerchik (*pro hac* application to be filed)
julie.gerchik@lw.com
355 South Grand Avenue
Los Angeles, CA 90071-1560
Tel.: (213) 485-1234
Fax: (213) 891-8763